IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 159 of 1999
DATE OF DECISION: 2.8.2007

The Commissioner of Income-tax, Haryana, Rohtak

…Applicant

Versus

Hemla Embroidery Mills Pvt. Ltd., Faridabad

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the applicant-revenue.

Mr. Sanjay Bansal, Senior Advocate, with
Mr. Parvesh Saini, Advocate,
for the respondent-assessee.

JUDGMENT

M.M. KUMAR, J.

At the instance of the revenue the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (for brevity, 'the Tribunal') has referred the following question of law under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'), which is stated to have emerged from I.T.A. No. 675/Del/92 from its order dated 16.3.1998, in respect of the assessment year 1987-88:-

> " Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the factory building did not belong to the assessee company as on the relevant valuation date relating to A.Y. 1987-88 and, therefore, the value thereof is not liable to Wealth Tax in the hands of the assessee company. "

The facts of the case are that the assessee-respondent filed its return of wealth on 10.6.1988 showing a net wealth of Rs. 3396/-, which consisted of motor cycle owned by the assessee company. Subsequently, on being pointed out to the assessee that land was owned by it, a revised return was filed on 30.11.1989 declaring value of the land as Rs. 2,53,396, which was leased to M/s R. Narayan Dying and Printing Mills. Lateron, vide letter dated 18.12.1989, the assessee stated that it had sold a part of its building and machinery to M/s R. Narayan Printing & Dying Pvt. Ltd. but the land was not sold and was given on lease. It was also intimated that the market value of the land cannot be more than Rs. 25/- per Sq. Yard. The Assessing Officer made a reference under Section 16A of the Wealth Tax Act, 1957 (for brevity, 'the 1957 Act') to the Valuation officer, Rohtak, for valuation of the land. Since the order under Section 16A(5) of the 1957 Act from the Valuation Officer was not received, therefore, the value of the land was estimated for the purposes of assessment. The value of the land was taken at Rs. 200/- per Sq. Yard and the total value as on the valuation date was assessed at Rs. 27,00,000/-, which was subject to rectification. The assessee pleaded before the Assessing Officer that

the factory building and machinery amounting to Rs. 15,00,000/- was transferred to the subsidiary company, however, no documentary evidence in support of transfer was furnished. The Assessing Officer estimated the value of the building at Rs. 10,00,000 and added the same to the net wealth of the assessee. The Assessing Officer also came to the conclusion that as per Section 40(3)(iv) of the Finance Act, 1983, building or land owned by an assessee is to be included in the net wealth unless the building was used by the assessee as a factory. Since in the instant case the building or land was not used as a factory by the assessee but by some other person, therefore, the Assessing Officer held that the same is includable in the wealth of the assessee. The Assessing Officer in the nut shell concluded that the assessee has deliberately concealed the taxable wealth in the original return, concealed the area of the land as well as suppressed its value in the revised return. The Assessing Officer, accordingly, vide his order dated 19.3.1991 ordered that proceedings under Section 18(1)(c) of the 1957 Act be initiated against the assessee and computed the wealth of the assessee as under:-

"Value of Vehicles as disclosed		Rs. 3,396/-
Value of land		Rs. 27,00,000/-
Value of building		Rs. 10,00,000/-
		Rs. 37,03,396/-
Tax & Wealth-Tax liability		74,068/-
Net Wealth	=	Rs. 36,29,328"

Against the order dated 19.3.1991, the assessee preferred an appeal before the Commissioner of Wealth Tax (Appeals),

Faridabad [CWT(A)], who while relying upon the judgment of Hon'ble the Supreme Court in the case of **Nawab Sir Meer Osman Ali Khan v. CIT, 162 ITR 888**, vide his order dated 30.3.1992, held that the value of the building is assessable in the hands of the assessee as no Registered Sale Deed was executed and registered in favour of the vendees. The CWT (A) also directed the Assessing Officer to determine the fair market value of the building in question at Rs. 3,50,000/- instead of Rs. 10 lacs, inasmuch as, the same amount was taken in the Income-tax assessment of the assessee for the assessment year 1987-88. The Assessing Officer was also directed to take a fair market value of the land as on 31.3.1987 at Rs. 9,00,000/- on the basis of rent capitalization method.

The revenue as well as the assessee preferred further appeals against the order dated 30.3.1992 passed by the CWT (A) before the Tribunal. The Tribunal after exhaustively dealing with the pleadings put forth before it by the revenue as well as the assessee, dismissed the appeal filed by the revenue and allowed the appeal of the assessee. The findings of the Tribunal are discernible from paras 6.14 to 6.18 of its order dated 16.3.1998, which reads as under:-

> "6.14 It would be imperative to repeat here that the Hon'ble Supreme Court in the case of Nawab Sir Meer Osman Ali Khan v. CWT (supra) had pointed out that the legislature would remedy the hardship of the assessee in such cases if it wants to obviate the taxability of such assets in the hands of the assessee who had a more husk of title and as against the vendee had no reply

of title. The Legislature has now remedied such a situation. The Hon'ble Supreme Court in the case of Podar Cement (supra) [Commissioner of Income-Tax v. Podar Cement Pvt. Ltd., (1997) 226 ITR 625] has clearly held that similar and corresponding provisions made in Sec. 27 of I.T. Act, 1961 were declaratory and clarificatory in nature. Consequently these provisions were held to be retrospective in operation. The purpose and nature of amendment and also the language of the amended provision of Sec. 4(8) of Wealth Tax Act are similar to the corresponding amendments made in Sec. 27 of Income Tax Act. We, therefore, respectfully following the judgements of the Hon'ble Supreme Court in the case of Podar Cement Pvt. Ltd. (supra) hold that the aforesaid provision introduced in the Wealth Tax Act should treated as declaratory and clarificatory in nature so far as it relates to the point in issue and, therefore, the amended provision will have retrospective operation.

6.15 It may also be worthwhile to make a useful reference to a decision of ITAT Mumbai Bench 'A' in the case of M/s. Tulsidas V. Patel Pvt. Ltd. v. W.T.O. WTA No. 1063 (Bom)/94 dated 17th June, 1997 The Tribunal in the said decision has observed as under:-

> "Under sub-sec. (2) of sec. 40 the Finance Act, 1983; the crucial words which require interpretation are belonging to the company". The

> Legislative mandate is that all the assets enumerated in sub-sec. (3) of sec. 40 belonging to the assessee company should be considered to be assets of that company for the purpose of levy of wealth tax. The Calcutta Tribunal unfortunately did not bestow its pointed attention on the crucial words "belonging to the company" and also did not interpret the correct meaning of words rds before deciding that leasehold interest of the assessee company for more than six years is not covered u/s 40 and simply it is covered by sec. 2 (e) of the W.T. Act. It would appear that these words "belonging to the company." It is enough in order to bring the asset under Finance Act, 1983 that the asset should be belonging to the company and not necessarily the company should be the owner of it. These crucial words "belonging to the company" bear specific legal connotation."

6.16 The Tribunal in the aforesaid decision also relied upon the judgement of Hon'ble Supreme Court in the case of Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur & Anr., AIR 1965 page 1923. In the said judgement, the Hon'ble Supreme Court has held that even possession of an interest less than that of full ownership should be signified by the words "belonging to" After quoting the extract from the said

judgement of the Hon'ble Supreme Court, the Tribunal observed as under:-

> "Therefore, it is clear from the above decision of the Hon'ble Supreme Court that "belonging to" does not denote absolute title. Even possession of an interest less than that of full ownership could be signified by those words. Therefore, from the above, it is clear that for an asset belonging to the company need not necessarily mean that the assessee should be full owner of that asset. It also includes the possession of an interest less than that of full ownership."

6.17 In view of the aforesaid facts and decisions, we are of the opinion that the value of the factory building which had already been transferred by the appellant company in favour of M/s R. Narayan Co. Pvt. Ltd. cannot be assessed in the hands of the appellant company. The appellant company had received the full consideration for transfer of the said factory building. It has also handed over the physical possession of the property to the vendee. The vendee is using and enjoying the said property without any hindrance or obstruction on the part of any one including the vendor, which the vendor could not do in view of Sec. 53A of the Transfer of Property Act. The asset in question cannot, therefore, be treated as belonging to the appellant

company. On the facts and circumstances of the present case, the vendee will be regarded as owner of the said factory building in conformity with the principles of law laid down by the Hon'ble Supreme court in the case of Podar Cement Pvt. Ltd. (supra) and in the light of discussion made in the earlier part of this order. The vendee has been accepted as owner of the factory building for purposes of income tax assessment and depreciation on the cost of factory building has been granted to them.

6.18 In view of the aforesaid facts and discussion, it cannot be said that the factory building belongs to the appellant company as on the relevant valuation date. We, therefore, direct the A.O. to delete the said addition of Rs. 3,50,000/- in the hands of the assessee company."

A perusal of the order passed by the Tribunal would reveal that it has mainly relied upon the judgment of Hon'ble the Supreme Court in the case of Podar Cement Pvt. Ltd. (supra), which squarely covers the controversy in hand.

We have heard learned counsel for the parties at some length and find that the controversy is squarely covered against the revenue and in favour of the assessee by the judgment of Hon'ble the Supreme Court in the case of Podar Cement Pvt. Ltd. (supra). It may be true that the amendment in Section 4(8) of the 1957 Act has been incorporated in the year 1997 but by virtue of the judgment in Podar

Cement case (supra) the amendment has to operate retrospectively because similar amendment in respect of Section 27 of the Act has been regarded as declaratory in nature by their Lordships. A Division Bench of this Court in the case of **Commissioner of Income Tax v. Badhurani Deepinder Kaur, (2003) 262 ITR 403** has followed and applied the judgment of Podar Cement case (supra) while construing the provisions of Section 4(8) and Section 2(m) of the 1957 Act. Therefore, the question necessarily has to be answered against the revenue and in favour of the assessee.

In view of the above, the question is answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 2, 2007
Pkapoor

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